

Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060
Tel: 212.309.6000
Fax: 212.309.6001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

MEMO ENDORSED

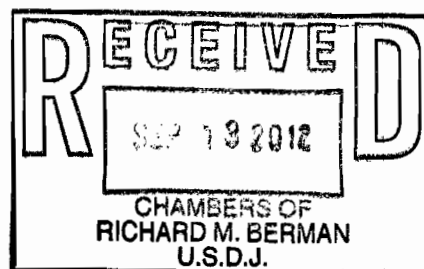
p. 3

Melissa D. Hill
212.309.6318
melissa.hill@morganlewis.com

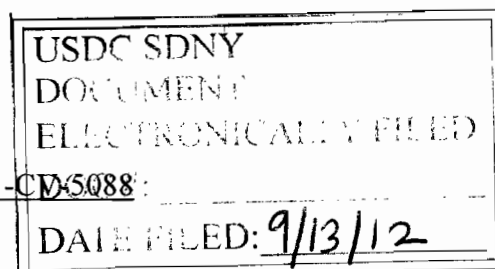
September 12, 2012

BY HAND DELIVERY

The Honorable Richard M. Berman
Southern District of New York
40 Centre Street
Courtroom 706
New York, New York 10007



Re: Vaigasi v. Solow Management Corp., et al., Index No. 11-CV-5088



Dear Judge Berman:

I write on behalf of Defendants in this matter to inform Your Honor that Plaintiff has filed another Complaint in the United States District Court for the Southern District of New York arising from and relating to the same events and circumstances that form the basis for his claims in Plaintiff's action before Your Honor. As detailed further below, we believe that, in view of Your Honor's prior rulings in this action, Plaintiff's conduct is improper, and we respectfully request a conference before this Court to address Plaintiff's most recent filing. In the interim, we also request a stay of briefing on the Defendant's pending Motion to Dismiss.

On August 30, 2012, Plaintiff filed a Complaint in the SDNY against eight separate defendants, seven of which are named Defendants in the instant action pending before Your Honor. A copy of the Plaintiff's new Complaint is attached for the Court's reference as Exhibit A to this letter. The new Complaint alleges several facts identical to those asserted in Plaintiff's Second Amended Complaint ("SAC") currently pending before this Court, and asserts similar claims of age and disability discrimination, as well as alleged wrongful termination and retaliation in violation of various statutes. Upon information and belief, the matter has not yet been assigned to a District Court judge, nor has Plaintiff affected service on any of the named defendants.

As the Court is likely aware, Plaintiff filed his original Complaint in this action on July 25, 2011, alleging claims of age and disability discrimination against Solow Management Corp., Solow Realty & Development Company, LLC, Townhouse Company, LLC, Solow Building Corp., and

The Honorable Richard M. Berman
September 12, 2012
Page 2

Individual Defendants Calicchio, Bernardino, Wischerth, Dedivanovic and Tumminia. (Dkt. No. 1.) On August 24, 2011, Defendants then named in the action submitted to the Court a pre-motion letter outlining the deficiencies in the initial Complaint. (Dkt. No. 4.) Within weeks, and before Defendants moved to dismiss the original Complaint, Plaintiff filed his first Amended Complaint on September 8, 2011, this time naming an additional corporate Defendant, five additional Individual Defendants and asserting over one hundred new allegations against defendants. (Dkt. No. 7.) Defendants again submitted a pre-motion letter to the Court seeking permission to move to dismiss the First Amended Complaint, and highlighting the multiple failures of Plaintiff's claims. The Court granted Defendants' request and set a briefing schedule for the proposed Motion. Before Defendants had the opportunity to so move, Plaintiff again sought to amend his Complaint, again adding new allegations and references to different statutes, in a third attempt to state a viable cause of action against Defendants and save his claims from dismissal. Pursuant to this Court's Order, Plaintiff filed the SAC on April 12, 2012, (Dkt. No. 83.), and Defendants timely moved to dismiss the SAC on May 2, 2012. (Dkt. No. 84.)

In the interim, Magistrate Judge Pitman entered a stay of all discovery pending resolution of Defendants' Motion to Dismiss. (Dkt. No. 66.) Plaintiff then moved to lift the stay and compel discovery, which request Judge Pitman squarely rejected. (Dkt. No. 78.) Plaintiff also made no less than three requests for the Court to appoint pro bono counsel, each of which was denied. (Dkt. Nos. 34, 78, 95.) In the time since Defendants filed their Motion to Dismiss the SAC, Plaintiff submitted four letters to this Court requesting, *inter alia*, additional discovery, the opportunity to again amend his complaint, and multiple extensions of time to respond to Defendants' motion. (Dkt. Nos. 87, 89, 96, 98.) The Court approved Plaintiff's requests for extension, allowing him to respond by August 24, 2012, but denied his remaining requests to take discovery or further amend his pleadings. Plaintiff filed his brief in opposition to Defendants' Motion to Dismiss on August 23, 2012. (Dkt. No. 99).

Now, in a patent attempt to circumvent this Court's prior rulings, Plaintiff purports to bring claims against a nearly identical group of defendants, for alleged violations of many of the same statutes, and based primarily on the same facts alleged in this matter. (*See* Ex. A at ¶¶ 44-56.) Indeed, Plaintiff's new Complaint comes *one week after* he filed his opposition to Defendants' Motion to Dismiss the instant matter, but alleges facts and asserts violations he claims occurred long *before* he filed the Second Amended Complaint in this action. (*Id.* at ¶¶ 57-60) Specifically, the only new facts alleged in the new complaint relate to alleged doctor's notes in January and December 2011, and Plaintiff's alleged termination in January 2012 – facts that he was aware of and could have asserted in his Second Amended Complaint filed in April 2012. (*Id.*)

By waiting to file a separate action now, Plaintiff seeks only to circumvent this Court's proscriptions on further discovery in the instant action, and to further harass Defendants. Plaintiff would have seven of the Defendants named in this action answer to nearly identical

Morgan Lewis
COUNSELORS AT LAW

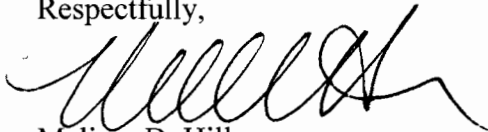
The Honorable Richard M. Berman
September 12, 2012
Page 3

claims, and be subjected to the very discovery this Court has repeatedly forbid him from taking, while awaiting resolution of Defendants' dispositive motion in this action. To allow Plaintiff to proceed on this course would thwart judicial economy and serve only to prejudice and harass Defendants.

Accordingly, Defendants respectfully request a conference with all parties before the Court to address Plaintiff's most recent filing, and that the Court to stay briefing on Defendants' pending Motion to Dismiss until such matters have been resolved.

Thank you for Your Honor's consideration.

Respectfully,



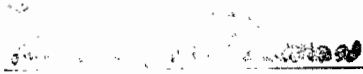
Melissa D. Hill

cc: Pedio Vaigasi (by email and U.S. Mail)
Mark Stofsky, Esq. (by email and U.S. Mail)

The application for a stay
of the briefing schedule is
respectfully denied.
No conference needed at
this time.

SO ORDERED:

Date: 9/13/12



Richard M. Berman, U.S.D.J.